UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

ROCKVILLE GENERAL HOSPITAL

Employer

and

Case 34-RC-2314

AMERICAN FEDERATION OF TEACHERS, CONNECTICUT

Petitioner

DECISION AND DIRECTION OF SECOND ELECTION

The National Labor Relations Board has considered an objection to an election held on May 13, 2009, and the hearing officer's report recommending disposition of it. The election was conducted pursuant to a Stipulated Election Agreement. The

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See Snell Island SNF LLC v. NLRB, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. September 11, 2009) (No. 09-328); New Process Steel v. NLRB, 564 F.3d 840 (7th Cir. 2009), cert. granted, __ S.Ct. __ , 2009 WL 1468482 (U.S. Nov. 2, 2009); Northeastern Land Services v. NLRB, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. August 18, 2009) (No. 09-213). But see Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed, U.S.L.W. (U.S. September 29, 2009) (No. 09-377).

tally of ballots shows 45 for and 46 against the Petitioner, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings² and recommendations,³ and finds that the election must be set aside and a new election held.

² The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

³ Member Schaumber agrees that the hearing officer's

Member Schaumber agrees that the hearing officer's recommendation to find objectionable conduct is consistent with extant Board precedent, which he applies for institutional reasons. However, he would revisit this line of precedent in an appropriate case. An employee who engages in open Section 7 activities at the work place has no reasonable expectation that those activities will not become known to his or her employer through casual observation. That risk is inherent in the activity; employers may make mental notes as easily as written ones, and employees are unlikely to be surprised or coerced by the fact that in a contested election the parties are monitoring their respective levels of support. Indeed, one of the benefits of the secret ballot is that the ultimate choice remains with the employee; he or she may wear a "vote no" button every day, but still vote yes if his or her conscience so dictates.

Chairman Liebman adheres to longstanding precedent holding that employer observation of open union activity crosses the line when the employer visibly takes notes absent good cause. When an employer visibly makes a record of its employees' prounion activity, the resulting coercion is not necessarily erased by the secrecy of the ballot: as they enter the polls, employees know that the record of their union activity already has been made, and that knowledge may likely tend to influence their vote.

DIRECTION OF SECOND ELECTION

A second election by secret ballot shall be held among the employees in the unit found appropriate, whenever the Regional Director deems appropriate. The Regional Director shall direct and supervise the election, subject to the Board's Rules and Regulations. Eligible to vote are those employed during the payroll period ending immediately before the date of the Notice of Second Election, including employees who did not work during the period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the date of the election directed herein and who retained their employee status during the eligibility period and their replacements. Those in the military services may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the date of the election directed herein, and employees engaged in an economic strike that began more than 12 months before the date of the election directed herein and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining by American Federation of Teachers, Connecticut.

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear, 156 NLRB 1236 (1996); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of the Notice of Second Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election if proper objections are filed.

Dated, Washington, D.C. November, 18, 2009.

Wilma B.	Liebman,	Chairman
Peter C.	Schaumber,	Member
NATIONAL	LABOR RELATIONS	BOARD

(SEAL)